

To: Nursing Facilities

Date: April 26, 2005

From: Marcia Cederdahl, RN, BSEd, Program Manager, HealthCare Facility Investigations
Eve Lewis, RN, Program Manager, LTC Facilities
Carol Lieske, Program Manager, Adult Protective Service

Re: NURSING FACILITY ABUSE/NEGLECT/MISAPPROPRIATION REPORTING REQUIREMENTS

****THIS MEMO IS EFFECTIVE July 1, 2005 AND SUPERCEDES ALL PREVIOUSLY ISSUED MEMOS RELATED TO LTC FACILITY ABUSE/NEGLECT/MISAPPROPRIATION REPORTING REQUIREMENTS.***

- I. As part of preventing abuse, neglect and misappropriation, LTC facilities must:**
1. Develop and implement policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.
 2. Provide Staff training on the reporting requirements (refer to Attachment A, B & C)
- II. In all cases of alleged abuse, neglect or misappropriation/exploitation of resident property, the role of the facility is to:**
1. Intervene in the situation
 2. Report the situation to the proper authorities
 3. Investigate the allegation
 4. Prevent abuse, neglect and misappropriation while the investigation is in process
 5. Have documented evidence that the facility:
 - a. Intervened
 - b. Reported
 - c. Prevented abuse/neglect/misappropriation
 - d. Investigated.

III. Best Practice Procedures:

When developing facility policy and procedures on Abuse/Neglect/Misappropriation, consultation with local law enforcement regarding notification procedures and evidence handling is recommended.

In cases where there is suspected or known sexual assault/abuse, serious physical injury, or theft, law enforcement should be notified prior to notification of other sources. In all cases, physical evidence should not be handled until law enforcement arrives.

If bruising or injury is present, proper documentation of the injury should be written at the time of discovery, and pictures taken if possible. It is important to document what action the facility took to prevent further alleged abuse and to protect the resident.

IV. Reporting Requirements

Federal	State
<p>42 CFR 483.13 (c)(2)</p> <p>The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported <u>immediately</u> (emphasis added) to the administrator of the facility and to other officials <u>in accordance with State law</u> (emphasis added) through established procedures (including to the State survey and certification agency).</p>	<p>28-372</p> <p>Report of abuse; required; contents; notification; toll-free number established.</p> <p>(1) When any physician, psychologist, physician assistant, nurse, nursing assistant, other medical, developmental disability, or mental health professional, law enforcement personnel, caregiver or employee of a caregiver, operator or employee of a sheltered workshop, owner, operator, or employee of any facility licensed by the Department of Health and Human Services Regulation and Licensure, or human services professional or paraprofessional not including a member of the clergy has reasonable cause to believe that a vulnerable adult has been subjected to abuse or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, he or she shall report the incident or cause a report to be made to the appropriate law enforcement agency or to the department. Any other person may report abuse if such person has reasonable cause to believe that a vulnerable adult has been subjected to abuse or observes such adult being subjected to conditions or circumstances which reasonable would result in abuse...</p> <p>28-711</p> <p>Child subjected to abuse or neglect; report; contents; toll-free number.</p> <p>(1) When any physician, medical institution, nurse, school employee, social work, or other person has reasonable cause to believe that a child has been subjected to abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in abuse or neglect, he or she shall report such incident or cause a report to be made to the proper law enforcement agency or to the department on the toll-free number established by section (2) of this section...</p>

V. Definitions

Federal Definitions	State Definitions
<p>Abuse: 42 Code of Federal Regulations (CFR) 488.301 “Abuse” means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.</p>	<p>Abuse: Nebraska (NE) Adult Protective Service (APS) Act: Nebraska Revised Statute (NEB. REV. STAT.) 28-351 Abuse shall mean any knowing, intentional or negligent act or omission on the part of a caregiver, a vulnerable adult or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, exploitation, or denial of essential services to a vulnerable adult.</p> <p>Physical injury: Physical injury shall mean damage to bodily tissue caused by nontherapeutic conduct, including, but not limited to, fractures, bruises, lacerations, internal injuries, or dislocations, and shall include, but not be limited to, physical pain, illness, or impairment of physical function.</p> <p>Unreasonable confinement: Unreasonable confinement shall mean confinement, which intentionally causes physical injury to a vulnerable adult.</p> <p>Cruel punishment: Cruel punishment shall mean punishment, which intentionally causes physical injury to a vulnerable adult.</p> <p>Denial of essential services to a vulnerable adult: Denial of essential services shall mean that essential services are denied or neglected to such an extent that there is actual physical injury to a vulnerable adult or imminent danger of the vulnerable adult suffering physical injury or death.</p> <p>Essential services: Essential services shall mean those services necessary to safeguard the person or property of a vulnerable adult. Such services shall include, but not be limited to, sufficient and appropriate food and clothing, temperature and sanitary shelter, treatment of physical needs, and proper supervision.</p> <p>Proper supervision: Proper supervision shall mean care and control of a vulnerable adult which a reasonable and prudent person would exercise under similar facts and circumstances.</p>
<p>Neglect: 42 CFR 488.301 “Neglect” means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.</p>	

<p>Misappropriation of Property: 42 CFR 488.301 “Misappropriation” of resident property means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent.</p>	
	<p>Exploitation: NE APS Act: (NEB. REV. STAT.) 28-358 Exploitation shall mean the taking of property of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, or extortion or by any unlawful means.</p>
<p>Sexual Abuse: 42 CFR 488.301 “Sexual abuse” includes, but is not limited to, sexual harassment, sexual coercion, or sexual assault.</p>	<p>NE APS Act: (NEB. REV. STAT.) 28-367 Sexual abuse defined. Sexual abuse shall include sexual assault as described in section 28-319 or 23-320 and incest as described in section 28-703.</p>
<p>Verbal abuse: 42 CFR488.301 “Verbal abuse” is defined as the use of oral, written or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to: threats of harm,; saying things to frighten a resident, such as telling a resident that he/she will never be able to she/her family again.</p>	

VI. SPECIFIC ISSUES RELATED TO REPORTING

- 1) Physical Injury (refer to definitions)
- 2) Elopement (refer to Federal definition of neglect and State definition of proper supervision).

VII. STAFF CONDUCT AFFECTING RESIDENTS:

1. What should be reported?
 - ◆ Any alleged mistreatment; neglect; misappropriation of resident's property (exploitation); physical, mental, verbal or sexual abuse; or involuntary seclusion of a resident by a staff member.
 - ◆ No call/no show/walking off the job by a nurse aide is not considered resident abuse/neglect and does not need to be reported unless this action by the nurse aide left the resident at risk of harm or endangered resident in any way.
 - ◆ All resident misappropriation of property needs to be reported. There is no dollar amount related to reporting.
2. Who to report to:
 - ◆ Health & Human Services (HHS), Regulation and Licensure (R& L) for the Federal Requirements at (402) 471-0316.
 - ◆ Health & Human Services, Adult Protective Services (APS) (800) 652-1999 or your local APS office for the State APS Act.
 - ◆ Contacting APS satisfies both Federal and State requirements for initial reporting.

-or-

- ◆ Local Law Enforcement Authority(LEA), according to facility policy or the severity of the incident
 - ◆ **If LEA is contacted (rather than APS) the Federal requirement is not satisfied. You will need to contact HHS, R & L at (402) 471-0316.**
3. Time frames for reporting:
 - ◆ **IMMEDIATELY (as defined in Centers for Medicare and Medicaid Services (CMS), Survey and Certification letter 05-09 "as soon as possible but ought not to exceed 24 hours after discovery of the incident, in the absence of a shorter state timeframe requirement") upon receiving the information of alleged abuse:**
 - ◆ Call the appropriate agencies to report
- and-
- ◆ Begin your internal investigation.

4. What to include in your reports:

A. Initial report (Initial telephone call):

1. Name and Date Of Birth Of Victim/Resident
2. Name, Date of Birth, Home Address, Home Phone and Healthcare Provider Credential Number of Staff Member Who Allegedly Abused
3. Date, Time and Location of alleged abuse/neglect
4. Specific Information Regarding the Allegations
5. Names, Addresses and Home Phone Numbers of Any Witnesses to the Incident.

B. Internal Investigation Report (5 working days written report):

1. Who was interviewed
2. Content of interview
3. Copy of written statements obtained from witnesses and alleged perpetrator with name and date, and signature if possible
4. Resident/victim diagnosis, ADL capabilities and information regarding the ability of the resident/victim to be interviewed.
5. Resident/victim reaction to incident, if able to obtain
6. Any circumstances surrounding the incident
7. Who was notified (i.e. Guardian, physician, family, etc.) When notification was made and by who.
8. Information regarding any medical care that was necessary as a result of the incident of abuse/neglect.
9. What steps the facility took to intervene and measures taken to prevent reoccurrence and protect the resident(s).

And if requested:

- a) Nursing notes from the day before, the day of and the day after the incident.
- b) Resident's care plan
- c) Pertinent staff personnel file information.

5. Points to Remember:

- ◆ ALL abuse/neglect/exploitation allegations MUST be reported immediately to the appropriate agencies
- ◆ The facility Internal Investigation Report may be used to help determine if the facility is in compliance with the regulations to protect the residents from harm.

VIII. CONDUCT AFFECTING RESIDENTS BY NON-STAFF

1. What should be reported?

- ◆ Any allegation of Abuse/Neglect/Misappropriation that results in a resident being physically injured; unreasonably confined; sexually abused; exploited; or resulting in a lack of food, clothing, shelter or supervision to a resident or residents in the facility.
- ◆ Allegations of ***resident to resident abuse*** that are not isolated, or are preventable or foreseeable by facility staff must be reported, regardless of injury or not.

2. Who to report to:

- ◆ Health & Human Services (HHS), Regulation and Licensure (R& L) for the Federal Requirements at (402) 471-0316.
- ◆ Health & Human Services, Adult Protective Services (APS) (800) 652-1999 or your local APS office for the State APS Act.
- ◆ Contacting APS satisfies both Federal and State requirements for initial reporting.

-or-

- ◆ Local Law Enforcement Authority (LEA), according to facility policy or the severity of the incident
- ◆ **If LEA is contacted (rather than APS) the Federal requirement is not satisfied. You will need to contact HHS, R & L at (402) 471-0316.**

3. Time frames for reporting:

- ◆ **IMMEDIATELY (as defined in Centers for Medicare and Medicaid Services (CMS), Survey and Certification letter 05-09 “as soon as possible but ought not to exceed 24 hours after discovery of the incident, in the absence of a shorter state timeframe requirement.”) upon receiving the information of alleged abuse.**
- ◆ Call the appropriate agencies to report

-and-

- ◆ Begin your internal investigation.

4. What to include in your report:

A. Initial report:

1. Name and Date of Birth of Victim/Resident
2. Name, address, phone number and Date of Birth of person who allegedly abused the resident
3. Names, Addresses and Home Phone Numbers of any witnesses to the alleged abuse
4. Date, Time and Location of alleged abuse

5. Detailed description of incident, including date(s) and time of incident and where the incident occurred
6. What steps the facility took to intervene and measures taken to prevent reoccurrence and protect the resident(s).

And if requested:

7. Resident care plans
8. Pertinent progress notes.

5. Points to Remember:

- ◆ The facility has a responsibility to protect the residents from abuse/neglect/misappropriation
- ◆ The facility has a responsibility to identify, to intervene in the abuse and take measures to prevent further occurrences and to immediately report the abuse/neglect/misappropriation to the proper authorities. As appropriate, the facility may wish to involve The Long-Term Care Ombudsman's office (402) 471-2307 or 800-942-7830.

IX. INJURIES OF UNKNOWN SOURCE

Definition: (CMS S & C letter 05-09)

"An injury should be classified as an "injury of unknown source" when both of the following conditions are met:

- 1) The source of the injury was not observed by any person **or** the source of the injury could not be explained by the resident;

and

- 2) The injury is suspicious because of the extent of the injury **or** the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma) **or** the number of injuries observed at one particular point in time **or** the incidence of injuries over time."

- Within the 5 working days, send in the completed investigation report to HHSS, R & L at:

Fax: (402) 471-1679

Mail: Health Facility Investigations

Attn: Intakes

PO BOX 94986

Lincoln, NE 68509

Attachment B

This worksheet and directions is offered to assist facilities in their internal investigation.

If, at any time, during the use of this tool, you have reason to suspect the injury was caused by abuse/neglect, you must **IMMEDIATELY** report to Adult Protective Services (1-800-652-1999), Local APS office or Local Law Enforcement. **If Law Enforcement is notified rather than APS, notify HHS R & L at (402) 471-0316.**

INJURIES OF UNKNOWN SOURCE CHECK SHEET

Date of injury _____ Reported by: _____

Facility Name, address and phone number: _____

Resident(s) Name(s):

Diagnosis:

Description of injury:

Observations of room (i.e. sharp edges, padding, call lights, etc.)

Resident:

1. What did the resident say caused the injury?
2. Is the resident: *alert, oriented, confused, cooperative, combative/resistive*
3. Does resident *reposition self or need assistance*?
4. Does resident transfer self or need assistance?
If assisted: *One* *Two* *Mechanical lift*
5. Does resident toilet self or need assistance?
6. Locomotive status: *self or with assistance*
 One Person assist *Two person assist* *Adaptive Equipment*
 Cane *Walker* *Wheelchair*
 Geri-chair
7. What is resident's fingernail and toenail status?
8. What is the skin status of resident?
9. Were there any previous skin tears/bruises on resident?
10. What is the hydration status of resident?
11. What medication is resident taking that might cause bruising?
12. Were interviews conducted with the assigned caregiver(s) for shift of injury noted and previous shift?
13. Other related factors?

ASSIGNED CAREGIVER (S):

14. What is the fingernail status of caregiver(s)?
15. What was the last inservice date of caregivers on:
 - Transfers/Lifting:
 - Dealing with combative residents:
16. How are assigned caregivers evaluated/monitored?

RESIDENTS WHO NEED ASSISTANCE:

Observe assigned caregiver(s) for shift of injury and previous shift for the following:

- Repositioning
- Transferring
- Toileting
- Transporting

RESIDENTS WHO ARE SELF ASSIST:

Observe residents for the following:

- Transfers
- Toileting
- Dining Room
- Hallway

THE FOLLOWING INDICATORS OF ABUSE/NEGLECT ARE PROVIDED TO HELP YOU TO DETERMINE IF ABUSE/NEGLECT SHOULD BE SUSPECTED. YOU ARE MANDATED TO REPORT ABUSE/NEGLECT AS EXPLAINED EARLIER IN THIS MEMO.

THIS LIST IS NOT ALL-INCLUSIVE

Possible Indicators of physical abuse-May include, but are not limited to the following:

- Burns, especially unusual location or pattern or shape.
- Bruises and/or hematomas:
- Bilateral on arms (may indicate shaking, grabbing, rough handling)
- Inner arm/thigh bruises
- Bruises on top of the head
- Clustered bruises on trunk from possible repeated striking
- Presence of old and new bruises at the same time as from repeated injuries
- Bruises resembling an object or human hand
- Bruise that do not resemble the explanation given for the cause
- Bruises on genitalia/rectum
- Injuries of unknown source
- Fractures of unknown origin

Signature: _____

Conclusion:

INSTRUCTIONS FOR COMPLETING
Questions on Injury of Unknown Source

Beginning portion of work sheet is self-explanatory

RESIDENT:

Questions 2-6 Circle appropriate response

- Question 7 If skin tear: No matter where skin tear is, document what fingernail status is.
Document toenail status only if tear is on leg.
- Question 8 Is skin dry and/or fragile?
- Question 9 How many, how often, and where are skin tears/bruises located?
Any pattern of bruising/skin tears regarding time of day occurred, caregiver, etc?
- Question 10 Is food and fluid intake of resident adequate?
- Question 11 Answer question only if injury is bruise.
- Question 12 Document for staff on shift of injury and previous shift.
- Question 13 Is resident's HGB and/or proteins down, etc?
Is there renal failure, etc?
Any loss of limbs, balance problems, unsteady gait or vision problems?

ASSIGNED CAREGIVER(S):

- Question 14 What did caregiver(s) know about the injury?
- Question 15 Self-explanatory
- Question 16 Self-explanatory

RESIDENTS WHO NEED ASSISTANCE or SELF ASSIST:

- Transfers: Does resident bump arms of chairs, bedside tables, etc.?
- Toileting: Does resident bump into wall or fixtures?
- Dining Room: Does resident bump table edge and/or legs when seating self or when feeding self? Is chair to table height correct?
- Hallway: Does resident run into handrail, corner, furniture, and other residents?
Is position correct in wheelchair/Geri-chair?

Attachment C

ABUSE PROHIBITION INVESTIGATIVE PROTOCOL

CMS Nursing Home Initiatives include the Abuse Prohibition Investigative Protocol:

- ❑ Effective October 1, 1999 in Nebraska
- ❑ Investigative Protocol Used
 - On every annual survey
 - On complaint investigations with violations of 483.13(b) F223-F226.
- ❑ 7 Components of Abuse Prevention:
 - Must be developed and operationalized into facility policy and procedures
 - Will be reviewed during annual and complaint surveys
 - Purpose is to assure facilities are doing all that is within their control to prevent occurrence.

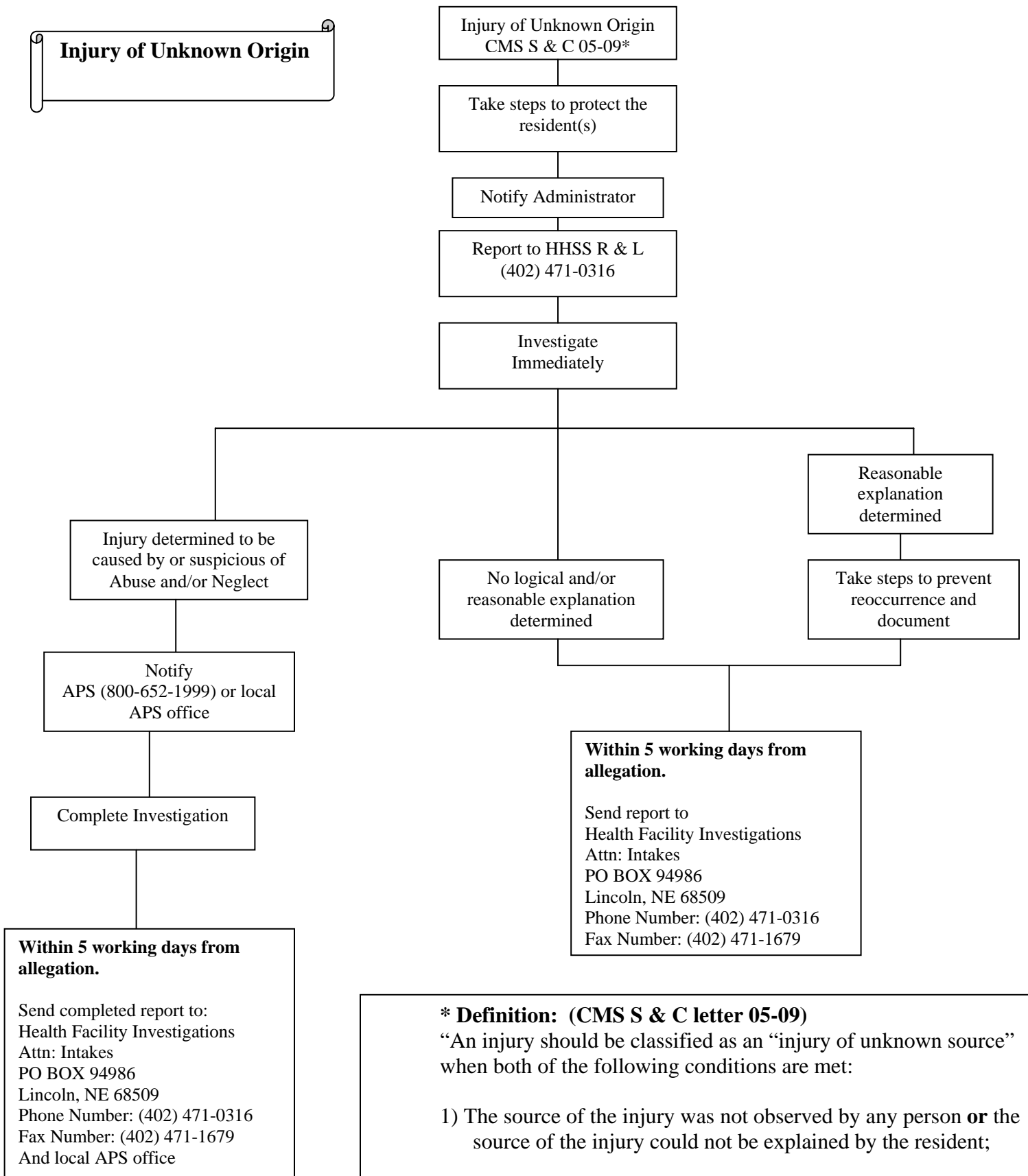
7 Components are:

1. Screening- Screen potential employees for history of abuse, neglect or mistreating residents by:
 - a) Checking previous/current employers
 - b) Make reasonable efforts to uncover information about any past criminal prosecution (if a felony conviction is discovered, it is the responsibility of the facility to notify the appropriate registry or examining board i.e.) Nurse Aide registry (402) 471-4971, Professional Licensing board, nursing, physician, social work, administrator (402) 471-0175.
 - c) Checking nurse aide registry
 - d) Checking licensing boards for professional licensed staff
 - e) Checking appropriate abuse registries
 2. Training- Train through orientation and ongoing about:
 - a) Appropriate interventions to deal with aggressive and/or catastrophic reactions of residents.
 - b) How staff should report their knowledge of allegations without fear of reprisal
 - c) How to recognize signs of burnout, frustration and stress that may lead to abuse
 - d) What constitutes abuse, neglect and misappropriation of resident property?
 3. Prevention- Have procedures to:
 - a) Encourage resident, families and staff to report concern, incidents and grievances without fear of retribution
 - b) Identify, correct and intervene in situations where abuse, neglect and/or misappropriation of resident's property are more likely to occur.
- Analysis of:
- Environment
 - Sufficient staff with knowledge of individual residents care needs

- Supervision of staff
 - Assessment, careplanning and monitoring of residents with needs and behaviors that might lead to conflict or neglect.
4. Identification- Have procedures to:
 - a) Identify events that may constitute abuse (i.e. suspicious bruising of residents, occurrences, patterns and trends)
 5. Investigation- Have procedures to:
 - a) Investigate different types of incidents
 - b) Identify staff member responsible for the initial report, investigation of alleged violations and reporting results to proper authorities.
 6. Protection-Have procedures to:
 - a) Protect residents from harm during an investigation.
 7. Reporting /Response- Have procedures to:
 - a) Report suspected incidents as required to local/state/federal agencies and take necessary corrective actions depending on investigation results.
 - b) Report to state Nurse Aide registry or licensing authorities any knowledge of convictions that would indicate any employee is unfit for service. Examples include but are not limited to:
 - Abuse
 - Assault
 - Theft
 - Forgery
 - A crime of Moral Turpitude-The Nebraska Supreme Court has said, “as a general rule, all crimes of which intent to defraud is a necessary element are looked upon as involving moral turpitude”. Another definition of moral turpitude includes everything done contrary to justice, honesty, modesty, or good morals.
 - c) Analyze the occurrences to determine what changes are needed to prevent further occurrences.

06-03, 09-03, 04-05

Injury of Unknown Origin



* **Definition: (CMS S & C letter 05-09)**

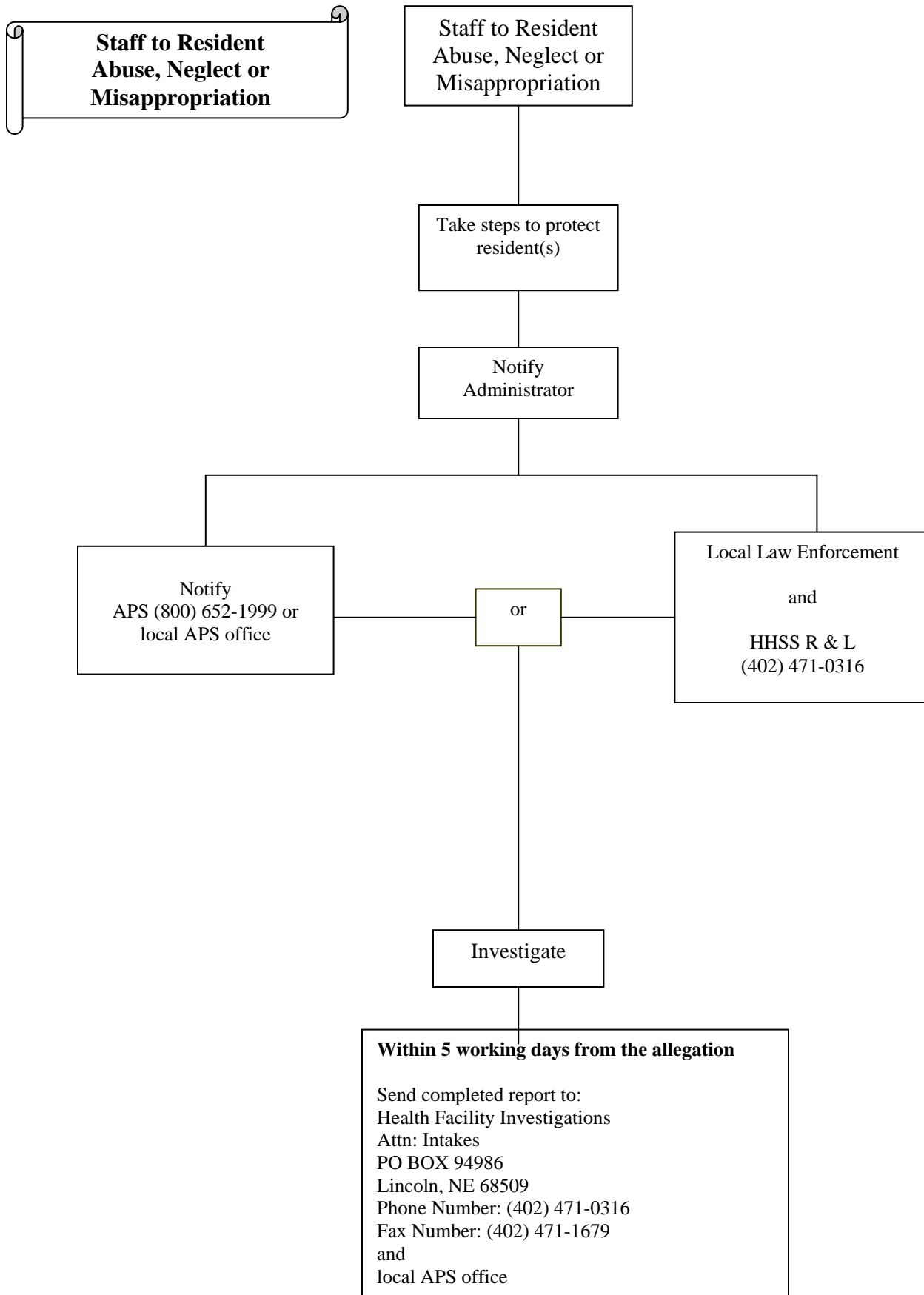
“An injury should be classified as an “injury of unknown source” when both of the following conditions are met:

1) The source of the injury was not observed by any person **or** the source of the injury could not be explained by the resident;

and

2) The injury is suspicious because of the extent of the injury **or** the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma) **or** the number of injuries observed at one particular point in time **or** the incidence of injuries over time.”

Attachment A



Resident to Resident Abuse

Resident to Resident Abuse

Allegation of Abuse

Take steps to protect resident(s)

Notify Administrator

Injury

Report to
APS (800) 652-1999 or
local APS office

or

Local Law Enforcement
and
HHSS R & L 402-471-0316

Investigate

Within 5 working days from allegation

Send completed report to:
Health Facility Investigations
Attn: Intakes
PO BOX 94986
Lincoln, NE 68509
Phone Number: (402) 471-0316
Fax Number: (402) 471-1679
and
Local APS office

No Injury

Not isolated
Was preventable
Was foreseeable

Report to
APS (800) 652-1999 or
local APS office

or

Local Law Enforcement
and
HHSS R & L 402-471-0316

Investigate

Within 5 working days from allegation

Send completed report to:
Health Facility Investigations
Attn: Intakes
PO BOX 94986
Lincoln, NE 68509
Phone Number: (402) 471-0316
Fax Number: (402) 471-1679

Isolated
Not preventable
Not foreseeable

Investigate

Take steps to prevent
reoccurrence and
document

No need to
report to
APS,
Local Law
Enforcement
or HHSS